

**COMMITTEE ON THE IMPACT OF
DOMESTIC VIOLENCE AND THE COURTS**

Minutes

February 12, 2013

Arizona State Courts Building

Conference Room 345A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (as Acting Chair), Judge Keith D. Barth (*telephonically*), Allison Bones, Ellen R. Brown, Esq., Sonja Burkhalter Gonzales, Chief Steven W. Campbell, Cathy Clarich, Joi Davenport (*telephonically*), Gloria Full, Patricia George (proxy for V. Michele Gamez, Esq.), Judge Carey Hyatt, Judge Joseph Knoblock, Patricia Madsen, Esq., Dana Martinez, Leah Meyers, Judge Cathleen B. Nichols (*telephonically*), Marla Randall (*telephonically*), Kristine Reich, Esq. (*telephonically*), Captain David Rhodes, Renae Tenney, Tracy J. Wilkinson

Absent/Excused: Judge Emmett Ronan, Chair, Judge Carol Scott Berry, Pegg Derrow, Lynn Fazz, Det. Eugene J. Tokosh

Administrative Office of the Courts (AOC) Staff: Kay Radwanski (AOC), Julie Graber (AOC)

Presenters/Guests: Theresa Barrett (AOC), Julee Bruno (AOC), Cindy Cook (AOC), Jami Cornish, Esq. (Diane Halle Center for Family Justice), Andrea C. Lawrence, Esq. (Hallier & Lawrence, PLC), Shannon Rich (Arizona Coalition Against Domestic Violence), Hon. Steven D. Sheldon, Ret. (Franks, Sheldon & Houser, P.C.), Sara A. Swiren, Esq. (Franks, Sheldon & Houser, P.C.), David Withey (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 12, 2013, meeting of the Committee on the Impact of Domestic Violence and the Court (CIDVC) was called to order at 10:05 a.m. by the Honorable Wendy Million, acting as chair in the place of the Honorable Emmett Ronan, chair, who was unable to attend. Judge Million welcomed all members and guests, and she introduced new members Ellen R. Brown, Domestic Violence Unit supervisor at the Pima County Attorney's Office in Tucson, and Steven W. Campbell, chief of police, City of El Mirage.

B. Approval of Minutes

The minutes of the September 11, 2012, CIDVC meeting were presented for approval.

Motion: To approve the September 11, 2012, meeting minutes as presented. **Action:** Approve, **Moved by** Cathy Clarich, **Seconded by** Judge Joseph Knoblock. Motion passed unanimously.

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Evidentiary Issues at Order of Protection Hearings

Hon. Steven D. Sheldon (Ret.) and Sara A. Swiren, Esq.; Andrea C. Lawrence, Esq., and Jami Cornish, Esq., presented evidentiary issues that they and other law practitioners have encountered at Order of Protection (OP) hearings. The issues relate to the preclusion of relevant and admissible evidence. Actual cases and case materials were used to illustrate these evidentiary issues and their impact on parties and cases. By referencing and applying the relevant sections of the Arizona Rules of Protective Order Procedures (ARPOP) to these cases, the attorneys challenged the legal basis for some judges to refuse to allow plaintiffs to testify about or admit any evidence of domestic violence allegations not specifically included in their petitions for OPs and for some courts to refuse to admit evidence based on non-disclosure when the ARPOP specifically states that disclosure is not required.

These concerns were brought to CIDVC to generate discussion and to remedy current practices. Judge Sheldon suggested additional training for courts on rules of disclosure and admissible evidence at OP hearings. Ms. Swiren pointed out the limited amount of space on the petition form for the plaintiff to list all of the allegations and suggested providing more space. Ms. Lawrence suggested holding an evidentiary hearing where all of the evidence would be presented and then giving the defendant a choice between presenting a defense at that time or returning at a later time to reply.

Judge Carey Hyatt noted that frequent judicial rotation and inexperienced commissioners may contribute to confusion about disclosure and due process notice requirements. Judge Sheldon responded that a balance is needed between protecting defendants' due process without truncating victims' rights. Members agreed that more training was necessary and a CIDVC workgroup should be assigned to study these issues.

B. Planning for the Next Strategic Agenda

Theresa Barrett, AOC manager of the Court Programs Unit, announced that the Arizona Judicial Branch has begun developing its Strategic Agenda for 2015-20. Ms. Barrett reviewed the planning process and the environment and thought process during the development of the current strategic agenda. She discussed the role that CIDVC members can play in the next strategic agenda and noted that one of CIDVC's primary charges to improve victims' safety is an ongoing topic throughout all strategic agendas. She provided members with different examples of how CIDVC has addressed this charge through their education efforts and other recommendations to the supreme court and then summarized the major accomplishments in the current strategic agenda and outlined ongoing initiatives.

Ms. Barrett reported that the AJC Strategic Agenda Subcommittee met in December and several topics were identified: Focus on access to justice issues for *pro se* litigants and language access; engage in proactive communication with the public to combat misperceptions of the judiciary by increasing public understanding of the role of judges and how they are selected; explore new technologies; and identify high-impact targets.

Ms. Barrett sought input from CIDVC in the drafting of the next strategic agenda and inquired about actual projects that members would recommend and current trends that members are seeing that may impact the courts in the next five years. She noted that CIDVC's recommendations will be presented to the Arizona Judicial Council (AJC) at its June meeting and the deadline for input is May 8, 2013.

CIDVC members agreed to create a Strategic Agenda Workgroup. Allie Bones, Ellen Brown, Gloria Full, Patricia George, Patricia Madsen, and Renae Tenney volunteered for the workgroup.

C. OVW Update: DV Summit

Julee Bruno, AOC Education Services specialist, updated members on upcoming projects and initiatives that are supported by the OVW grant from the U.S. Department of Justice that expires June 30, 2013:

- The "Domestic Violence Summit: Court Community Response," is scheduled for March 15, 2013, at the Fiesta Inn and Conference Center in Tempe, Ariz. The program will feature national speakers who will discuss current issues surrounding domestic violence and its impact on Arizona (e.g., witness intimidation, sex trafficking, and protective orders).
- A workbook is being developed to accompany the DV bench book, which will contain scenarios, how-to's, and best practices. The workbook will be presented to judges by webcast.
- At least two DV training sessions are being planned for the 2013 Judicial Conference in June.

D. AzCADV White Paper

Allie Bones presented an executive summary ("white paper") from the Arizona Coalition Against Domestic Violence (AzCADV). The report was created to outline community recommendations about systems changes needed in the courts to better protect domestic violence victims and to hold abusers accountable. Ms. Bones said these issues were identified and solutions proposed during the Coalition's 2012-2016 strategic planning process. She summarized the main points and proposed solutions as follows:

1. Low prosecution rates (as compared to DV arrests) - Workgroup to identify solutions and conduct research into causes.
2. Lack of regulation of supervised parenting time/supervised visitation centers - Establish regulations and requirements for providers.
3. CPS involvement in family court proceedings - Hold meetings with CPS, juvenile court and family court to understand how each operates and to collaborate on serving survivors and their children to minimize contradictions in systems.
4. Limited translation/interpretation services in the courts - Additional resources needed for those who do not speak English or Spanish.
5. Need for consistency in court services - DV training for judges, best interest attorneys, guardians ad litem, commissioners, judges pro tem, parenting coordinators, and custody evaluators; consistency with Orders of Protection; how to provide new information and new best practices.

Members considered changes to CIDVC's current workgroups to discuss new topics. Some members proposed discontinuing the A.R.S. §13-3601 Review Workgroup and the Batterer Treatment Programs Workgroup. Members supported a new education workgroup to include judicial education and other disciplines (such as law enforcement and prosecution) and a new child welfare and family court workgroup to address situations where CPS is involved. CIDVC agreed to first set up the strategic agenda workgroup and hold off on creation of other workgroups until the strategic agenda planning is completed.

E. Legislative Update

Shannon Rich, AzCADV systems advocacy coordinator, presented a brief overview of the domestic violence-related legislation that has been introduced during the current legislative session. Ms. Rich noted that AzCADV's legislative priority for 2013 is the budget and funding for domestic violence programs. She outlined the measures that AzCADV is supporting, opposing, and tracking and provided status information on the bills' progress.

In Support

SB 1038 (parenting time; court-ordered supervisors)
SB 1111 (spousal maintenance)
HB 2383 (domestic violence; arrest; predominant aggressor)
HB 2392 (confidential information; protective orders; injunctions)

In Opposition

SB 1071 (modification of legal decision-making)
SB 1072 (parenting time; relocation of child)
SB 1202 (out-of-wedlock children; fathers; rights)

Tracked

HB 2002 (missing child; reporting offenses)
SB 1236 (domestic relations committee; membership)
SB 1172 (qualifying charitable credit; itemizing deductions)

F. Update: Petitions to Amend ARPOP Rules

Kay Radwanski, AOC court policy analyst, reported on several rule petitions that have been filed that affect the Arizona Rules of Protective Order Procedure (ARPOP).

Members were asked to consider whether CIDVC should file formal comments to any of the petitions.

- [R-12-0007](#) – ARPOP Rule 6(E)(4)(e)(2)
This petition filed by Michael Roth regarding Injunctions Against Harassment (IAH) and weapons was continued from 2012 with another version under consideration. The Court substituted language proposed by the State Bar that would require a judge to make a finding that the defendant is a credible threat to the plaintiff before prohibiting weapons on an IAH. The deadline to respond to the petition is May 20, 2013. Ms. Radwanski will work with the ARPOP Workgroup to prepare a comment supporting the Court's proposed additional language. The comment will be reviewed at CIDVC's May meeting.

- [R-13-0002](#) – Arizona Supreme Court Rule 123
The petition, filed by the Advisory Committee on Supreme Court Rules 123 and 125, would amend Rule 123 regarding access to public records by identifying which family law minute entries and orders may be published online and by restricting Internet publication of certain protective order case information to safeguard the identity and location of protected persons in compliance with federal statute. The deadline for response is April 1, 2013.

Motion: To file a comment to petition R-13-0002 stating that CIDVC supports the proposed amendments. **Action:** Approve. **Moved by** Judge Carey Hyatt, **Seconded by** Leah Meyers. CIDVC members also authorized Judge Ronan or Judge Million to file the comment to R-13-0002. Motion passed unanimously.

- [R-13-0023](#) – Arizona Supreme Court Rule 123
This petition filed by Mike Palmer from Phoenix would amend Rule 123 for the purpose of encouraging the Court's various committees to post meeting minutes on the Internet within five working days after a public meeting. The deadline to respond is May 21, 2013. Ms. Radwanski explained that standing committees of the AJC are governed by the Arizona Code of Judicial Administration (ACJA), which requires draft minutes to be available for public inspection within 20 working days; Posting minutes on the committees' websites is done as a convenience. Minutes are not archived on the websites until they have been approved by the committees but are available in draft form. Ms. Radwanski will work with the ARPOP Workgroup to prepare a comment in response to the petition. The comment will be reviewed at CIDVC's May meeting.
- [R-13-0029](#) – All ARPOP Rules
The petition filed by Mike Palmer requests repeal of the ARPOP rules in their entirety on constitutional grounds. The deadline for response is May 21, 2013. Ms. Radwanski will work with the ARPOP Workgroup to prepare a comment in response to the petition. The comment will be reviewed at CIDVC's May meeting.

G. Arizona Case Processing Standards – Protective Orders

Cindy Cook, AOC court services specialist and staff to the Arizona Case Processing Standards Steering Committee (Steering Committee), reported that the Steering Committee was tasked to review national time standards and Arizona rules and statutes in order to develop case processing standards for Arizona courts. Ms. Cook described the model case processing time standards as a management tool that provides a reasonable set of expectations for courts, attorneys, and the public, and as the first step toward quick and efficient handling of cases, with achievable goals for courts, necessary timeframes for attorneys, and defined expectations for the public on how quickly a case can be concluded. She explained that the Steering Committee is recommending that Arizona adopt its own standard for protection orders because of significant differences among state laws. The timelines would be measured as follows:

- *Ex-parte* hearings within 24 hours (from filing of protective order to when it is issued, denied, or pre-issuance hearing is set) 99%
- Contested hearing within 10 days (from filing of hearing request to when it is affirmed, modified or quashed). 90%
- Contested hearing within 30 days 98%

The committee is gathering input on establishing Arizona standards, and preliminary recommendations will be posted on the following website starting February 15, 2013, where comments may be submitted: <http://www.azcourts.gov/caseprocessingstandards/home.aspx>. A final draft of the proposed case processing standards will be circulated to stakeholders, including CIDVC, for recommendation to the AJC.

Some members reported scenarios in their counties where an Order of Protection is requested and a case number is assigned but the plaintiff does not proceed to the courtroom for the *ex parte* hearing. The person might or might not return to have it issued (resulting in a dismissal after 30 days in some courts). The question was asked about the appropriate measurement for cases of this kind. Members considered creating a different category for them; lowering the percentages; and measuring the time from the filing of the petition to when the pre-issuance hearing is held or to when a pre-issuance hearing is set (so these cases would not be counted in the measurement). Ms. Cook indicated she would take CIDVC's comments back to the committee.

H. Protective Order Forms – Update

Kay Radwanski and David Withey, AOC chief legal counsel, updated members on a recent opinion, *Mahar v. Acuna (Mahar)*, issued by the Arizona Court of Appeals, Division II, which directly reviewed the language on the Order of Protection (OP) form. The opinion prompted a need for CIDVC to review the OP form again and possibly revise its recommendation from last September to add language to the OP in response to the 9th Circuit's opinion in *U.S. v. Sanchez (Sanchez)*.

Mr. Withey reviewed the *Mahar* opinion, in which the trial court's Notice to Sheriff of Brady Disqualification was vacated because the firearms restriction was either unsupported by the record or legally erroneous. He explained that firearms restrictions are triggered either by a finding of credible threat (A.R.S. § 13-3602(G)(4)) or by a finding of credible threat or by an explicit prohibition of the "use, attempted use, or threatened use of physical force" against an intimate partner that would reasonably be expected to cause bodily injury (18 U.S.C.A. § 922(g)(8)). The Court of Appeals considered the OP a general no-contact order that did not include any explicit prohibition, and as such, did not result in firearms restrictions under federal statute (18 U.S.C. § 922(g)(8)(c)(ii)). Additionally, in order to determine if the defendant poses a credible threat, Arizona statutes and rules require the judicial officer to ask about the defendant's use of or access to firearms and then to follow mandatory procedures for transferring firearms if it is so determined (A.R.S. § 13-3602(G)(4)). The record in *Mahar* did not show evidence of credible threat or that these procedures were followed by the court.

Ms. Radwanski provided previous versions of the OP form to show its evolution over the years and discussed an analysis of the form performed in 2000 by the Bureau of Alcohol, Tobacco, and Firearms. During the Project Passport initiative, which made significant changes to the form that was adopted in 2007, the “No Crimes” language was substituted for the list of specific crimes that constitute domestic violence pursuant to A.R.S. § 13-3601 to conserve space on the form. The legal standard for issuing an Order of Protection also was removed during the Project Passport initiative. Ms. Bones, who participated in the Project Passport initiative, explained that, like the consolidation of the “No Crimes” section, this was done simply to conserve space on the form.

Members discussed the language on the form and Brady criteria. It was noted that Brady comes into play only when there is a contested hearing, and only about 30% of cases go to a contested hearing. The parties also must be intimate partners, and the defendant must have received notice and had an opportunity to participate in the hearing. Members compared language from previous versions of the OP form and proposed modifications to the current form.

Motion: To amend the Order of Protection form by adding the legal standard for issuance of an Order of Protection: “The Court finds reasonable cause to believe that the Defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year (or good cause exists to consider a longer period).” Under NO CRIMES, keep the proposed language that reads: “Defendant shall not commit any crimes, including but not limited to conduct involving the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury” and then add “or harassment or stalking” against Plaintiff or Protected Persons. On the second page of the Order of Protection, retain the proposed addition to the warnings: “However, orders are not automatically granted upon request. Legal requirements must be met.” **Moved by Leah Meyers, Seconded by Allie Bones.** Discussion ensued. Additions were made to the original motion. The checkbox that shows that “Defendant received actual notice of this Hearing and had an opportunity to participate” should be retained. An introductory statement should be added in front of “Firearms” on the second page of the Order of Protection form to read “Pursuant to 13-3602(G).” In addition, “bodily injury” should be changed to “physical safety” to conform to Arizona statutory language. **Amended Motion:** To amend the Order of Protection form incorporating the original motion and the additions to the motion, as discussed. **Moved by Leah Meyers, Seconded by Allie Bones.** Motion passed unanimously.

I. Workgroup Reports

Workgroup reports were tabled until the Strategic Agenda Workgroup finishes its task.

III. OTHER BUSINESS

A. Call to the Public

No persons from the general public were present.

Chief Campbell reported that public safety announcements (PSAs) about domestic violence are available for downloading. The PSAs were created by the El Mirage Police Department with a grant from Verizon. Other members of the El Mirage community participated in the creation of the PSAs.

B. Next Meeting

May 14, 2013

Conference Room 119A/B

Arizona State Courts Building

1501 W. Washington St.

Phoenix, AZ 85007

The meeting adjourned at 2:28 p.m.